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Retransmission of Television and Radio Broadcasts by Cable Television Systems

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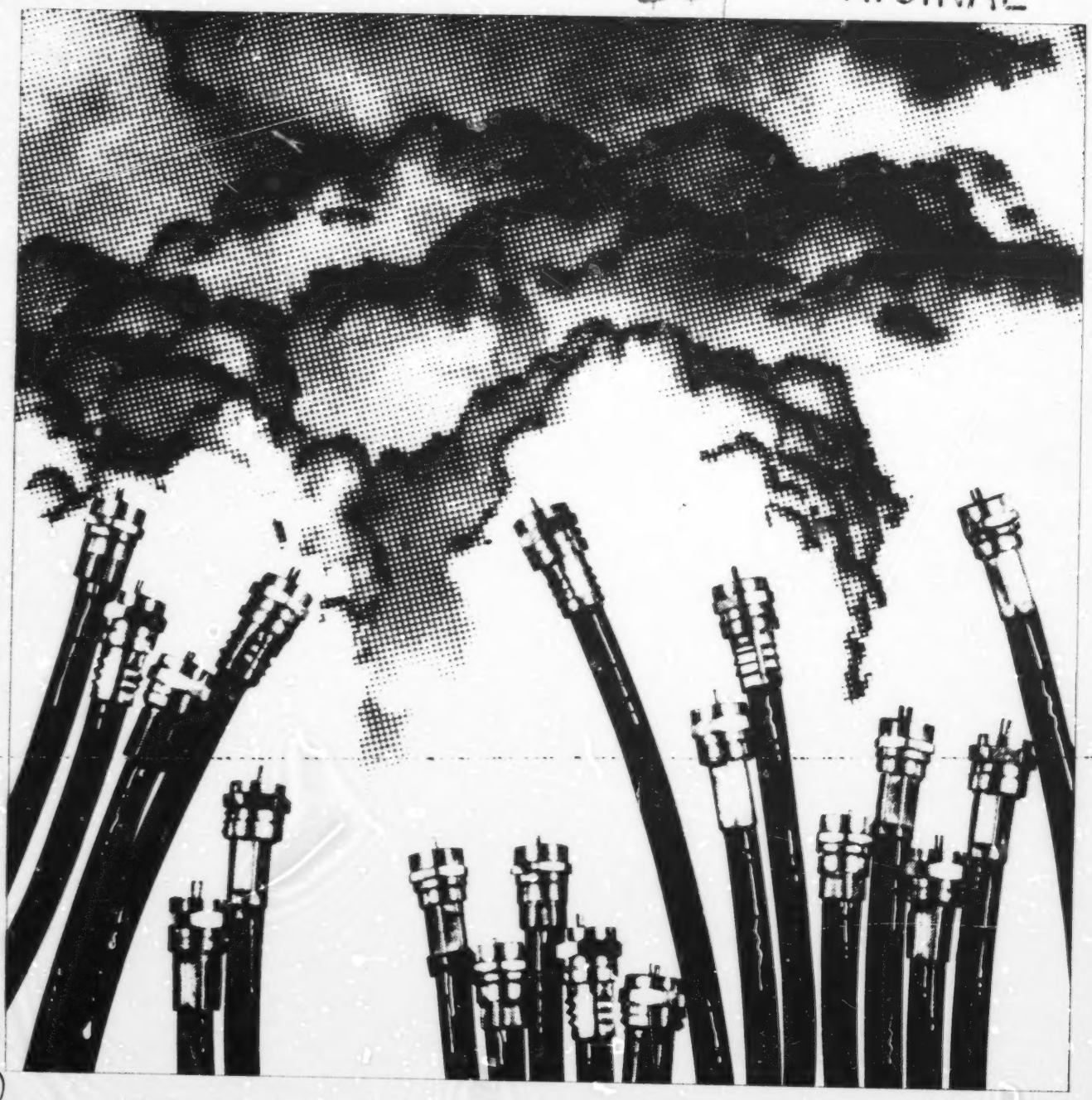

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Retransmission of Television and Radio Broadcasts by Cable Television Systems

Information About Compulsory Licensing of Cable Retransmissions of Copyrighted Programming Under the Copyright Law

NEW COPYRIGHT LAW ON CABLE RETRANSMISSIONS

Beginning on January 1, 1978, cable systems have been required by statute to pay for use of copyrighted material in "secondary transmissions" (the retransmission of television and radio broadcasts to subscribers).

Most television and radio broadcasts contain copyrighted material. In general, the revised Copyright Act (title 17, United States Code, section 106) gives the owner of copyright in works embodied in television and radio broadcasts the exclusive rights to perform or display the works publicly. These exclusive rights include the right to authorize the retransmission of the television and radio broadcasts by cable systems to subscribers. However, there is an important limitation on these exclusive rights: Instead of obliging cable systems to bargain individually for each copyrighted program they retransmit, the law offers them the opportunity of obtaining a "compulsory license" covering all performances and displays of copyrighted works included in cable retransmissions.

COMPULSORY LICENSES FOR CABLE RETRANSMISSIONS

What is a "Compulsory License?"

Ordinarily, if someone wants to use a copyrighted work for commercial purposes, that person must first negotiate a license with the copyright owner and pay whatever royalty the license calls for. In a few special situations, however, the copyright law gives the user an opportunity to obtain a "compulsory license." Under a compulsory license, the copyrighted work can be used in certain ways without permission from the copyright owner, as long as the user follows a procedure set out in the statute and pays established royalty fees at stated intervals.

How the Cable Television Compulsory License Works

The compulsory license for secondary transmissions by cable systems is provided by section 111 of the copyright law and is implemented by Copyright Office regulations. To summarize section 111 very generally: If a cable system pays a twice-yearly royalty fee, only retransmits the unaltered signals of those United States television and radio stations that it is authorized to carry under rules, regulations, or authorizations of the Federal Communications Commission (FCC) (plus Mexican or Canadian stations in certain cases), and complies with certain reporting requirements, it has met its copyright obligations for the retransmission of copyrighted material contained in the television and radio broadcasts. The fees are paid to the Copyright Office and distributed annually to copyright owners through the Copyright Royalty Tribunal, a separate agency.

> The compulsory license, however, does not cover transmissions originated by a cable system (including local origination cablecasting, pay-cable, background music services, and originations on leased or access channels); as under the law in effect prior to January 1, 1978, cable systems must negotiate directly with the particular copyright owners for the use of any copyrighted material in the programming they originate.

Effect of Not Having a Compulsory License

If a cable system fails to comply with the compulsory licensing requirements, either it would have to negotiate licenses for all copyrighted programming it retransmits, or run the risk of substantial civil (or, in some cases, criminal) liability for multiple acts of copyright infringement.

WHO CAN OBTAIN A COMPULSORY LICENSE?

Under the law, the right to acquire a compulsory license covering secondary transmissions is limited to

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"cable systems." This term is defined in the statute and Copyright Office regulations:

"Cable System": A facility, located in any State, Territory, Trust Territory, or Possession, that in whole or in part receives signals transmitted or programs broadcast by one or more television broadcast stations licensed by the FCC, and makes secondary transmissions of such signals or programs by wires, cables, or other communications channels to subscribing members of the public who pay for such service. A system that meets this definition is considered a "cable system" for copyright purposes, even if the FCC excludes it from being considered a "cable system" because of the number or nature of its subscribers or the nature of its secondary transmissions.

Under the law and Copyright Office regulations, various Copyright Notices, Statements of Account, and royalty fee payments must be filed with the Office by each "individual" cable system desiring its secondary transmissions to be subject to compulsory licensing. An "individual" cable system is defined generally as each cable system recognized as a distinct entity under the rules, regulations, and practices of the FCC. In addition, the copyright law specifies that two or more cable facilities are to be considered as one "individual" cable system if either:

a. The facilities are in contiguous communities and are under common ownership or control; or

b. The facilities operate from one headend.

Cable facilities falling into one of these two categories must file a joint Notice, Statement of Account, and royalty fee for each filing.

The various Notices, Statements of Account, and royalty fees are discussed further in this circular.

WHAT A COMPULSORY LICENSE DOES NOT PERMIT A CABLE SYSTEM TO DO

A compulsory license generally permits a cable system to retransmit, at the same time of actual broadcast, the unaltered signals of those United States television and radio stations that it is authorized to carry under FCC rules, regulations, or authorizations. There are, however, several exceptions and limitations on the statutory authority given to cable systems under a compulsory license:

Originations

A cable system's compulsory license extends only to secondary transmissions (retransmissions). It does not permit the system to make any originations of copyrighted material without a negotiated license covering that material.

Nonsimultaneous Retransmissions

In general, to be subject to compulsory licensing under the copyright law, a cable retransmission must be simultaneous with the broadcast being carried. As a rule, taping or other recording of the program is not permitted. Taping for delayed retransmission is permissible only for some (not all) cable systems located outside the 48 contiguous States; and, even in these exceptional cases, there are further limitations and conditions that the cable system must meet. For further information about the limitations and conditions that must be met in these exceptional cases, contact the Licensing Division of the Copyright Office.

Carriage in Violation of FCC Rules

The broadcast signals that a cable system can carry under a compulsory license are limited to those that it is permitted to carry under FCC rules, regulations, and authorizations. If signal carriage is in violation of FCC requirements, the cable system may be subject under the Copyright Act to a separate action for copyright infringement for each unauthorized retransmission.

Carriage of Foreign Signals

In general, the copyright law does not permit a cable system to retransmit signals of foreign television and radio stations under a compulsory license. The only exceptions have to do with the signals of certain Canadian and Mexican stations:

Canadian Stations: Canadian television and radio stations may be carried by a cable system if either:

A. The cable system is located either 150 miles or less from the United States-Canadian border or north of the forty-second parallel of latitude; or

B. Before April 15, 1976, the cable system was actually carrying, or was specifically authorized to carry, the signal of the particular Canadian station under the rules, regulations, or authorizations of the FCC.

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Mexican Stations: Mexican television and radio stations may be carried by a cable system if either:

A. The cable system obtained the Mexican signal by means of direct interception of a free space radio wave [use of any equipment or device other than a receiving antenna (a microwave relay, for example) would not be permitted]; or
B. Before April 15, 1976, the cable system was actually carrying, or was specifically authorized to carry, the signal of the particular Mexican station under the rules, regulations, or authorizations of the FCC.

Unless foreign signals fall within one of these two exceptions, their carriage would not be authorized under a compulsory license, even if permissible under FCC rules.

Program Alteration or Commercial Substitution

Cable systems are not permitted to alter the content of retransmitted programs, or to change, delete, or substitute commercials or station announcements in, or adjacent to, programs being carried. There is only one exception: Under certain circumstances, substitutions involving "commercial advertising market research" may be permitted. For further information about this exception, contact the Licensing Division of the Copyright Office.

PROCEDURES FOR OBTAINING AND KEEPING A COMPULSORY LICENSE

Four Basic Requirements

There are four basic requirements for obtaining and keeping a compulsory license:

1. Initial Notice of Identity and Signal Carriage Complement. A cable system first obtains its compulsory license by filing an Initial Notice of Identity and Signal Carriage Complement with the Copyright Office. In general, the Notice should identify the owner and location of the cable system and specify the television and radio broadcast stations that the system plans to carry regularly. *The law requires that the filing of the Notice take place at least 1 month before the date when the cable system begins operations.* The Copyright Office does not furnish printed forms for this Notice. For further information about the requirements governing the contents and filing of this Notice, contact the Licensing Division of the Copyright Office.

2. Notice of Change of Identity or Signal Carriage Complement. If the owner of the cable system changes, or if there is a change in the list of television and radio stations that the system is carrying regularly, the system is required to send a notice of the change to the Copyright Office *within 30 days of the change.* The Copyright Office does not furnish printed forms for this Notice of Change. For further information about the requirements governing the contents and filing of a Notice of Change, contact the Licensing Division of the Copyright Office.

3. Statement of Account for Secondary Transmissions by Cable Systems. Every 6 months, a cable system must send the Copyright Office a Statement of Account on a form which must be obtained from the Copyright Office. The law requires a cable system to file Statements of Account for two purposes:

- To show the basis for the semiannual royalty fee the cable system owes under its compulsory license; and
- To provide information needed to allocate royalty fees among copyright owners.

In general, the Statement of Account calls for detailed information about the owner and location of the cable system, rates charged to subscribers, carriage of television and radio broadcast stations, and the "gross receipts" paid to the cable system by subscribers for the basic service of providing secondary transmissions during the accounting period. The Copyright Office furnishes three different printed Statement of Account forms; the appropriate form to be used by a particular cable system is determined by the amount of the system's "gross receipts":

- *Form CS/SA-1 (the Short Form)* should be used by cable systems whose "gross receipts" are $55,500 or less;
- *Form CS/SA-2 (the Intermediate Form)* should be used by cable systems whose "gross receipts" are more than $55,500 but less than $214,000; and
- *Form CS/SA-3 (the Long Form)* should be used by cable systems whose "gross receipts" are $214,000 or more.

According to Copyright Office regulations, "gross receipts" includes the full amount of monthly (or other periodic) service fees for television and radio retransmission service, additional set fees, and converter fees. It does not include installation (including connection, relocation, disconnection, or reconnection) fees, charges for pay-cable, security, alarm or facsimile services, or charges for late payments.

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4. Royalty Fee. Each semiannual Statement of Account must be accompanied by the deposit of a royalty fee covering retransmissions during the preceding 6 months. The Licensing Division of the Copyright Office deducts its reasonable costs incurred in administering this compulsory license and deposits the balance into an interest bearing United States Treasury Account. The funds in this account along with the accumulated interest is later distributed by the Copyright Royalty Tribunal to copyright owners as payment for the use of their works in retransmissions by cable systems. The law creates three brackets for purposes of computing the semiannual royalty fee to be paid by a cable system. These three brackets correspond to the three Statement of Account forms, and the royalty fee is calculated in different ways depending into which bracket the cable system falls:

- *Gross receipts of $55,500 or less:* Royalty fee of $20;
- *Gross receipts of more than $55,500 but less than $214,000:* The royalty fee is determined by a formula based on a percentage of gross receipts; and
- *Gross receipts of $214,000 or more:* The royalty fee is determined by a formula based generally on a percentage of gross receipts and the amount of carriage by the cable system of distant nonnetwork programming.

These formulas and the procedures for calculating the royalty fee are fully explained on the various Statement of Account forms.

Accounting Periods

Each cable system that has acquired a compulsory license must file a Statement of Account and royalty fee with the Copyright Office every 6 months. The first semiannual period runs from January through June, and the second from July through December, of each calendar year.

Filing Dates

Cable systems are given 60 days after the close of each accounting period in which to file their Statements of Account and royalty fees. The following are the two filing dates which must be observed each year:

- *For the January-June accounting period:* File between July 1 and August 29, inclusive; and
- *For the July-December accounting period:* File between January 1 and March 1 of the following year, inclusive.

Statements of Account and royalty fees received before the end of the accounting period in which they are due will be returned. Statements of Account and royalty fees received after the August 29 or March 1 deadlines will be filed for whatever legal effect they may have, if any. The Copyright Office takes no position as to what this effect will be, and a cable system that files late runs a substantial risk.

NOTE: Every "cable system" in the United States, its Territories, Trust Territories, or Possessions is subject to the compulsory licensing requirements and must file the necessary Notices, Statements of Account, and royalty fees. There are no exceptions. A cable system must file and pay regardless of its size, regardless of whether or not it made a profit, and regardless of whether it carried anything other than local stations.

SOME POINTS TO REMEMBER ABOUT COMPULSORY LICENSES:

- As long as a cable system keeps its compulsory license in force by complying with the requirements of the copyright law, it is not obliged to negotiate individual copyright licenses for retransmission of television and radio broadcasts.
- The following are among the various ways a cable system can lose its compulsory license: By failing to file the required Initial Notice of Identity and Signal Carriage Complement or Notices of Change; by failing to file the Statements of Account or royalty fees; by taping for delayed retransmission; by carrying signals in violation of FCC requirements; by carriage of certain foreign stations; and by altering programs or substituting commercials.
- Without a compulsory license, a cable system can be sued by a copyright owner for the full range of civil remedies for copyright infringement, including injunctions, actual damages and profits, or statutory damages (of up to $50,000 in cases of willful infringement). The statute also provides for criminal penalties in cases of willful infringement for commercial purposes.

CORRECTING ERRORS IN STATEMENTS OF ACCOUNT, MAKING SUPPLEMENTAL PAYMENTS, AND SECURING APPROPRIATE REFUNDS

Copyright Office regulations permit cable systems to make corrections to previously submitted Statements of Account and to make supplemental royalty payments in

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cases where the original submissions were incorrect. In addition, cable systems may request refunds of excess royalty payments in limited cases and under certain conditions. For further information about how to correct a Statement of Account, make a supplemental payment, or request a refund, contact the Licensing Division of the Copyright Office.

Time Limitations for Refund Requests

A correction to a previously submitted Statement of Account or a supplemental royalty payment may be made at any time after the initial submission. A request for a refund of excess royalties must, however, be received in the Copyright Office with the appropriate fee *before the expiration of 60 days from the last day of the applicable Statement of Account filing period:*

- *For the January-June accounting period:* Refund requests must be made by October 28; and
- *For the July-December accounting period:* Refund requests must be made by April 30 of the following year.

DISTRIBUTION OF ROYALTIES FOR CABLE RETRANSMISSIONS

Statutory Procedure

Compulsory licensing fees paid by cable systems are received and accounted for by the Licensing Division of the Copyright Office, which deposits them into an interest bearing account in the United States Treasury for distribution by the Copyright Royalty Tribunal. In general, the statute permits claims to be filed by copyright owners whose works were included in distant retransmissions of nonnetwork television and radio programs. During July of each year, persons or organizations who believe they are entitled to share in the cable royalties for the preceding year should file a claim with the Tribunal. Then, after the beginning of August of that year, the Tribunal distributes any royalties not in controversy and conducts proceedings aimed at settling disputes over distribution. For further information about royalty payments, contact the Copyright Royalty Tribunal.

CERTAIN SECONDARY TRANSMISSIONS FREE FROM COPYRIGHT LIABILITY

The compulsory license provided for by the copyright law permits the retransmissions of radio and television broadcasts containing copyrighted material **only** if they are made by "cable systems," and if various Notices, Statements of Account, and royalty fees are filed by each "individual" cable system. As a general rule, all other secondary transmitters must bargain individually with copyright owners for each copyrighted program they retransmit. The law does, however, provide four instances where a secondary transmitter is free from all copyright liability for its retransmissions and need not secure permission from copyright owners nor obtain a compulsory license, for the exempted retransmissions:

1. Retransmission of "local" television and radio signals by hotels, apartment houses, or similar establishments: This exemption only applies to the mere relay of ordinary local broadcasts to the private lodgings of guests or residents (limited generally to rooms used as living quarters or for private parties) on the condition that no direct charge is made to see or hear the secondary transmission.

2. Retransmission of instructional broadcasts: This exemption generally permits the retransmission of instructional broadcasts containing performances and displays of certain types of copyrighted works subject to several conditions set forth in section 110(2) of the copyright statute.

3. Retransmissions by "passive" carriers: This exemption permits the retransmission of certain signals by certain carriers whose activities with respect to the retransmission consists solely of providing communications channels for the use of others subject to several conditions set forth in section 111(a)(3) of the copyright statute.

4. Retransmission not by a cable system but by a governmental body or other nonprofit organization: Retransmissions are free from copyright liability if the secondary transmitter operates on a completely nonprofit basis. The operations of "translators" and "boosters," as well as other governmental and nonprofit organizations, would fall under this exemption if they do nothing more than amplify broadcast signals and retransmit them to everyone in an area for free reception, if there is no purpose of direct or indirect commercial advantage, and if there is no charge to the recipients other than assessments necessary to defray the actual and reasonable costs of maintaining and operating the secondary transmission service. *This exemption would not apply to a cable system.*

For further information about these exemptions, contact the Licensing Division of the Copyright Office.

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WHERE TO OBTAIN FORMS, FILE FORMS AND FEES, AND OBTAIN INFORMATION

For Cable System Operators:

If you need any of the three Statement of Account forms [Forms CS/SA-1 (Short Form), Form CS/SA-2 (Intermediate Form), or Form CS/SA-3 (Long Form)] or more information about obtaining or maintaining a compulsory license, write to:

Licensing Division
Copyright Office
Library of Congress
Washington, D.C. 20557
Phone: (202) 287-8150

In any request for Statement of Account forms, please give an estimate of the number of "individual" cable systems to be licensed so that enough forms will be sent to you.

For Copyright Owners:

If you need information about distribution of royalties, write to:

Copyright Royalty Tribunal
1111—20th Street, N.W.
Washington, D.C. 20036
Phone: (202) 653-5175

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